

AMENDED IN SENATE MAY 2, 2017

SENATE BILL

No. 784

Introduced by Senator Galgiani

(Coauthors: Senators Anderson and Jackson)

(Coauthors: Assembly Members Mathis, Voepel, and Dababneh)

February 17, 2017

An act to amend Section 647 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 784, as amended, Galgiani. Crimes: disorderly conduct: invasion of privacy.

Existing law provides that a person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through the clothing being worn by that other person, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy, is guilty of disorderly conduct, a misdemeanor. Existing law provides that a person who uses a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the

interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person, is guilty of disorderly conduct, a misdemeanor.

~~This bill would additionally make it a crime to intentionally distribute or disseminate, or to make available or viewable, any image obtained pursuant to the provisions described above, including through publication, posting through electronic media, or by any other means.~~

This bill would allow a court, in a case in which a person violates the above provisions and intentionally distributes or makes the image or recording accessible to any other person, to impose a fine in an amount not to exceed \$1,000 in addition to the punishment prescribed for the violation. The bill would require the court to include economic losses suffered by the victim for costs incurred to delete, remove, and eliminate the images and recordings when imposing restitution.

~~By creating a new~~ increasing the punishment for a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:

3 647. Except as provided in paragraph (5) of subdivision (b)
4 and subdivision (l), every person who commits any of the following
5 acts is guilty of disorderly conduct, a misdemeanor:

6 (a) An individual who solicits anyone to engage in or who
7 engages in lewd or dissolute conduct in any public place or in any
8 place open to the public or exposed to public view.

9 (b) (1) An individual who solicits, or who agrees to engage in,
10 or who engages in, any act of prostitution with the intent to receive
11 compensation, money, or anything of value from another person.
12 An individual agrees to engage in an act of prostitution when, with
13 specific intent to so engage, he or she manifests an acceptance of
14 an offer or solicitation by another person to so engage, regardless

1 of whether the offer or solicitation was made by a person who also
2 possessed the specific intent to engage in an act of prostitution.

3 (2) An individual who solicits, or who agrees to engage in, or
4 who engages in, any act of prostitution with another person who
5 is 18 years of age or older in exchange for the individual providing
6 compensation, money, or anything of value to the other person.
7 An individual agrees to engage in an act of prostitution when, with
8 specific intent to so engage, he or she manifests an acceptance of
9 an offer or solicitation by another person who is 18 years of age
10 or older to so engage, regardless of whether the offer or solicitation
11 was made by a person who also possessed the specific intent to
12 engage in an act of prostitution.

13 (3) An individual who solicits, or who agrees to engage in, or
14 who engages in, any act of prostitution with another person who
15 is a minor in exchange for the individual providing compensation,
16 money, or anything of value to the minor. An individual agrees to
17 engage in an act of prostitution when, with specific intent to so
18 engage, he or she manifests an acceptance of an offer or solicitation
19 by someone who is a minor to so engage, regardless of whether
20 the offer or solicitation was made by a minor who also possessed
21 the specific intent to engage in an act of prostitution.

22 (4) A manifestation of acceptance of an offer or solicitation to
23 engage in an act of prostitution does not constitute a violation of
24 this subdivision unless some act, in addition to the manifestation
25 of acceptance, is done within this state in furtherance of the
26 commission of the act of prostitution by the person manifesting
27 an acceptance of an offer or solicitation to engage in that act. As
28 used in this subdivision, “prostitution” includes any lewd act
29 between persons for money or other consideration.

30 (5) Notwithstanding paragraphs (1) to (3), inclusive, this
31 subdivision does not apply to a child under 18 years of age who
32 is alleged to have engaged in conduct to receive money or other
33 consideration that would, if committed by an adult, violate this
34 subdivision. A commercially exploited child under this paragraph
35 may be adjudged a dependent child of the court pursuant to
36 paragraph (2) of subdivision (b) of Section 300 of the Welfare and
37 Institutions Code and may be taken into temporary custody
38 pursuant to subdivision (a) of Section 305 of the Welfare and
39 Institutions Code, if the conditions allowing temporary custody
40 without warrant are met.

1 (c) Who accosts other persons in any public place or in any
2 place open to the public for the purpose of begging or soliciting
3 alms.

4 (d) Who loiters in or about any toilet open to the public for the
5 purpose of engaging in or soliciting any lewd or lascivious or any
6 unlawful act.

7 (e) Who lodges in any building, structure, vehicle, or place,
8 whether public or private, without the permission of the owner or
9 person entitled to the possession or in control of it.

10 (f) Who is found in any public place under the influence of
11 intoxicating liquor, any drug, controlled substance, toluene, or any
12 combination of any intoxicating liquor, drug, controlled substance,
13 or toluene, in a condition that he or she is unable to exercise care
14 for his or her own safety or the safety of others, or by reason of
15 his or her being under the influence of intoxicating liquor, any
16 drug, controlled substance, toluene, or any combination of any
17 intoxicating liquor, drug, or toluene, interferes with or obstructs
18 or prevents the free use of any street, sidewalk, or other public
19 way.

20 (g) If a person has violated subdivision (f), a peace officer, if
21 he or she is reasonably able to do so, shall place the person, or
22 cause him or her to be placed, in civil protective custody. The
23 person shall be taken to a facility, designated pursuant to Section
24 5170 of the Welfare and Institutions Code, for the 72-hour
25 treatment and evaluation of inebriates. A peace officer may place
26 a person in civil protective custody with that kind and degree of
27 force that would be lawful were he or she effecting an arrest for a
28 misdemeanor without a warrant. A person who has been placed
29 in civil protective custody shall not thereafter be subject to any
30 criminal prosecution or juvenile court proceeding based on the
31 facts giving rise to this placement. This subdivision does not apply
32 to the following persons:

33 (1) A person who is under the influence of any drug, or under
34 the combined influence of intoxicating liquor and any drug.

35 (2) A person who a peace officer has probable cause to believe
36 has committed any felony, or who has committed any misdemeanor
37 in addition to subdivision (f).

38 (3) A person who a peace officer in good faith believes will
39 attempt escape or will be unreasonably difficult for medical
40 personnel to control.

1 (h) Who loiters, prowls, or wanders upon the private property
2 of another, at any time, without visible or lawful business with the
3 owner or occupant. As used in this subdivision, “loiter” means to
4 delay or linger without a lawful purpose for being on the property
5 and for the purpose of committing a crime as opportunity may be
6 discovered.

7 (i) Who, while loitering, prowling, or wandering upon the private
8 property of another, at any time, peeks in the door or window of
9 any inhabited building or structure, without visible or lawful
10 business with the owner or occupant.

11 (j) (1) A person who looks through a hole or opening, into, or
12 otherwise views, by means of any instrumentality, including, but
13 not limited to, a periscope, telescope, binoculars, camera, motion
14 picture camera, camcorder, or mobile phone, the interior of a
15 bedroom, bathroom, changing room, fitting room, dressing room,
16 or tanning booth, or the interior of any other area in which the
17 occupant has a reasonable expectation of privacy, with the intent
18 to invade the privacy of a person or persons inside. This subdivision
19 does not apply to those areas of a private business used to count
20 currency or other negotiable instruments.

21 (2) A person who uses a concealed camcorder, motion picture
22 camera, or photographic camera of any type, to secretly videotape,
23 film, photograph, or record by electronic means, another,
24 identifiable person under or through the clothing being worn by
25 that other person, for the purpose of viewing the body of, or the
26 undergarments worn by, that other person, without the consent or
27 knowledge of that other person, with the intent to arouse, appeal
28 to, or gratify the lust, passions, or sexual desires of that person and
29 invade the privacy of that other person, under circumstances in
30 which the other person has a reasonable expectation of privacy.

31 (3) (A) A person who uses a concealed camcorder, motion
32 picture camera, or photographic camera of any type, to secretly
33 videotape, film, photograph, or record by electronic means, another,
34 identifiable person who may be in a state of full or partial undress,
35 for the purpose of viewing the body of, or the undergarments worn
36 by, that other person, without the consent or knowledge of that
37 other person, in the interior of a bedroom, bathroom, changing
38 room, fitting room, dressing room, or tanning booth, or the interior
39 of any other area in which that other person has a reasonable

1 expectation of privacy, with the intent to invade the privacy of that
2 other person.

3 (B) Neither of the following is a defense to the crime specified
4 in this paragraph:

5 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
6 employer, employee, or business partner or associate of the victim,
7 or an agent of any of these.

8 (ii) The victim was not in a state of full or partial undress.

9 (4) (A) A person who intentionally distributes the image of the
10 intimate body part or parts of another identifiable person, or an
11 image of the person depicted engaged in an act of sexual
12 intercourse, sodomy, oral copulation, sexual penetration, or an
13 image of masturbation by the person depicted or in which the
14 person depicted participates, under circumstances in which the
15 persons agree or understand that the image shall remain private,
16 the person distributing the image knows or should know that
17 distribution of the image will cause serious emotional distress, and
18 the person depicted suffers that distress.

19 (B) A person intentionally distributes an image described in
20 subparagraph (A) when he or she personally distributes the image,
21 or arranges, specifically requests, or intentionally causes another
22 person to distribute that image.

23 (C) As used in this paragraph, “intimate body part” means any
24 portion of the genitals, the anus and in the case of a female, also
25 includes any portion of the breasts below the top of the areola, that
26 is either uncovered or clearly visible through clothing.

27 (D) It shall not be a violation of this paragraph to distribute an
28 image described in subparagraph (A) if any of the following
29 applies:

30 (i) The distribution is made in the course of reporting an
31 unlawful activity.

32 (ii) The distribution is made in compliance with a subpoena or
33 other court order for use in a legal proceeding.

34 (iii) The distribution is made in the course of a lawful public
35 proceeding.

36 ~~(5) (A) A person who intentionally distributes or disseminates~~
37 ~~or who makes available to, or viewable by, any other person,~~
38 ~~including through publication, posting through electronic media,~~
39 ~~or by any other means, any image obtained in violation of~~
40 ~~paragraph (2) or (3).~~

1 ~~(B) A person intentionally distributes an image described in~~
2 ~~subparagraph (A) when he or she personally distributes the image,~~
3 ~~or arranges, specifically requests, or intentionally causes another~~
4 ~~person to distribute that image.~~

5 ~~(C) It shall not be a violation of this paragraph to distribute an~~
6 ~~image described in subparagraph (A) if any of the following~~
7 ~~applies:~~

8 ~~(i) The distribution is made in the course of reporting an~~
9 ~~unlawful activity.~~

10 ~~(ii) The distribution is made in compliance with a subpoena or~~
11 ~~other court order for use in a legal proceeding.~~

12 ~~(iii) The distribution is made in the course of a lawful public~~
13 ~~proceeding.~~

14 *(5) In a case in which a person violates paragraph (2) or (3)*
15 *and intentionally distributes or makes accessible to any other*
16 *person, in any manner, an image or recording that is a subject of*
17 *the violation of paragraph (2) or (3), the court may, in addition*
18 *to the punishment prescribed for a violation of paragraph (2) or*
19 *(3), impose a fine, not to exceed one thousand dollars (\$1,000).*
20 *When imposing restitution pursuant to Section 1202.4, the court*
21 *shall include economic losses suffered by the victim for costs*
22 *incurred to delete, remove, and eliminate all distributed images*
23 *and recordings, including, but not limited to, retaining professional*
24 *assistance to delete, remove, and eliminate all distributed images*
25 *and recordings to the extent practicable, in an amount to be*
26 *determined by the court.*

27 ~~(6) This subdivision does not preclude punishment under any~~
28 ~~section of law providing for greater punishment.~~

29 ~~(k) In addition to any punishment prescribed by this section, a~~
30 ~~court may suspend, for not more than 30 days, the privilege of the~~
31 ~~person to operate a motor vehicle pursuant to Section 13201.5 of~~
32 ~~the Vehicle Code for any violation of subdivision (b) that was~~
33 ~~committed within 1,000 feet of a private residence and with the~~
34 ~~use of a vehicle. In lieu of the suspension, the court may order a~~
35 ~~person's privilege to operate a motor vehicle restricted, for not~~
36 ~~more than six months, to necessary travel to and from the person's~~
37 ~~place of employment or education. If driving a motor vehicle is~~
38 ~~necessary to perform the duties of the person's employment, the~~
39 ~~court may also allow the person to drive in that person's scope of~~
40 ~~employment.~~

(l) (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

(m) (1) If a crime is committed in violation of subdivision (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known that the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(2) The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days of imprisonment in a county jail required by this subdivision. If the court reduces or eliminates the mandatory two days' imprisonment, the court shall specify the reason on the record.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

REVISIONS:

Heading—Line 3.

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